

Whipple, John J., OSE

From: Whipple, John J., OSE
To: bkw5@humboldt.edu
Cc:
Subject: RE: Navajo Settlement
Attachments:

Sent: Wed 11/2/2005 12:23 PM

Barbara:

The Navajo settlement would not affect the Colorado Ute settlements or the Jicarilla Apache settlement. The Navajo settlement would recognize the Animas-La Plata Project water allocation made to the Navajos by the Colorado Ute Settlement Act Amendments of 2000, and it would allow for the authorization of the Navajo-Gallup Water Supply Project. The Jicarilla Apaches would participate in the Navajo-Gallup Project, through which they would use a portion of their water rights established through the Jicarilla Apache Tribe Water Rights Settlement Act of 1992. No non-Indian irrigation rights were cancelled or reduced to accomodate the Navajo settlement.

The Navajo settlement resolves the Navajo Nation's claims in the San Juan River Basin in New Mexico for federal reserved water rights under the Winters doctrine and for state appropriation rights. New Mexico state water law is based on the prior appropriation doctrine. Some of the provisions in the settlement were incorporated to provide that the exercise of the Navajos water rights will be subject to the Upper Colorado River Basin Compact, Public Law 87-483 which authorized the Navajo Indian Irrigation Project, and state law. Interstate compacts are both federal and state law. Pursuant to the McCarran Amendment, the United States has waived sovereign immunity to allow federal and Indian water rights to be adjudicated in federal or state courts. The draft legislation that would provide Congressional approval of the Navajo settlement would reaffirm that the state district court in the San Juan River Adjudication has authority over the adjudication of the Navajos water rights and the proposed decree that would define said rights. The settlement also would resolve jurisdictional issues as to the application of state law and the Navajo water code on Navajo lands.

The main problems that would be addressed by the Navajo settlement are: (1) settlement of the Navajo Nation's water right claims in the San Juan River Basin in New Mexico within the water available to the State of New Mexico under the Upper Colorado River Basin Compact and without displacing existing water uses in the basin; (2) agreement on how the Navajo-Gallup Water Supply Project can move forward to provide a much needed renewable water supply from the San Juan River to meet the municipal, industrial and domestic water needs of the City of Gallup, and of Navajo communities throughout northwest New Mexico and the Window Rock area of Arizona; and (3) resolution of jurisdictional issues over water uses on Navajo lands.

Good luck with your paper.

John Whipple

From: bkw5@humboldt.edu [mailto:bkw5@humboldt.edu]
Sent: Fri 10/28/2005 2:10 PM
To: Whipple, John J., OSE
Subject: Navajo Settlement

Dear Mr. Whipple,

I spoke with Perry Abernethy this morning and he gave me your email for a contact. I am a student at Humboldt State University in California taking an introductory Water Law class. My term paper is on the San Juan Basin Settlement with the Navajo. I have been working my way through the Settlement document, but some things are unclear for me. Could you answer a few questions for me? If you do not have time, is there any one else that could answer them? I will ask them here if you do have time.

How does the Settlement affect other Settlements on Indian Lands within the San Juan Basin (Ute and Jicarilla). Were these Settlements just restated as diversion amounts allowed in the San Juan Settlement? Were there cutbacks on any water rights of non-Indian irrigators?

What were the key water law issues addressed? I have seen Reserved Water rights, Interstate basin contracts, but not sure how McCarran Amendment applies.

What main problems were solved by the Settlement?

Thank you for your time in answering these questions and helping me to understand the Settlement more clearly.

Sincerely,
Barbara Witmore
Humboldt State University
California